

1 Gregory L. Lippetz (State Bar No. 154228)
glippetz@jonesday.com
2 Cora L. Schmid (State Bar No. 237267)
cschmid@jonesday.com
3 JONES DAY
1755 Embarcadero Road
4 Palo Alto, CA 94303
Telephone: 650-739-3939
5 Facsimile: 650-739-3900

6 Attorneys for Defendant
MAXIM INTEGRATED PRODUCTS, INC.
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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 Gregory Bender,

13 Plaintiff,

14 v.

15 Maxim Integrated Products, Inc.,

16 Defendant.
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Case No. C 09-01152 SI

**MAXIM INTEGRATED PRODUCTS,
INC.'S REPLY TO OPPOSITION TO
MOTION FOR SANCTION OF
DISMISSAL**

Date: July 30, 2010
Time: 9:00 a.m.
Place: Ctrm. 10, 19th Floor
Judge: Hon. Susan Illston

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I. INTRODUCTION

Bender's Opposition to Maxim's motion completely fails to address most of the violations of this Court's March 22, 2010 order. Instead, Bender's opposition is essentially a motion for reconsideration of that order. The time for reconsideration has passed.

Bender's case should be dismissed as a sanction for violating this Court's order. Bender fails to explain how his 2nd Amended Infringement Contentions (his "3rd ICs") satisfy this Court's order. Specifically, Bender fails to show where in his contentions he has identified the location of each element of each asserted claim. Bender continues to violate the specific instructions of this Court by "assuming" the presence of elements, circling portions of high-level data sheets, and arguing that "any engineer" could find the proverbial needles in the haystacks of accused products. Bender's attempt to rely on expert declarations is completely nullified by the directly contrary testimony provided by these experts at their depositions. Bender fails to provide the Court-ordered justification for his "grouping" of products, or the required basis for his claims of indirect infringement.

Having clearly violated a Court order, there is ample authority for this Court to end this charade of a case. Bender made a conscious choice not to perform the investigation required by the law. It is now time to stop the prejudice to Maxim from Bender's conduct, and dismiss this case in its entirety.

II. ARGUMENT

A. Bender Has Failed To Prove That He Complied With This Court's March 22, 2010 Order.

1. Bender Cites No Authority To Excuse Him From Identifying The Location Of The Claim Elements As Ordered By The Court.

Bender continues to misinterpret the case law discussing reverse engineering as providing a "get out of jail free" card to lazy plaintiffs who refuse to investigate the functionality of products they accuse of infringement. Bender argues that he should be excused from complying with this Court's order because "reverse engineering is not required." (Docket No. 60 at 9:20-21.) While the law does not absolutely require reverse engineering in all cases, a patentee's

1 unwillingness to reverse engineer in appropriate circumstances does not excuse insufficient
 2 contentions. Bender's reliance on *Intamin, Ltd. v. Magnetar Techs., Corp.*, 483 F.3d 1328 (Fed.
 3 Cir. 2007), is misplaced. The Court in *Intamin* held that a plaintiff may be excused from
 4 purchasing and analyzing a product under Rule 11 where "the technology present[s] the patentee
 5 with unreasonable obstacles to any effort to obtain a sample of [the accused] amusement ride
 6 brake system, let alone the difficulty of opening the casing." *Id.* at 1338. Here, Maxim's
 7 products are readily available, and Bender has offered no evidence that he would face any
 8 obstacles obtaining the accused Maxim products. *Q-Pharma, Inc. v. Andrew Jergens Co.*, 360
 9 F.3d 1295 (Fed. Cir. 2004), is also unhelpful to Bender. In *Q-Pharma*, the Federal Circuit found
 10 that a patentee was excused from reverse engineering where the identification of all of the
 11 elements of the asserted claims could be ascertained from the product label without reverse
 12 engineering. *Id.* at 1300-02. Bender does not allege, nor is it the case, that the elements of
 13 Bender's claims can be ascertained from the available Maxim product literature.

14 Bender's reliance on cases in which courts found different sets of contentions relating to
 15 different claims compliant with Patent L.R. 3-1 is unhelpful here. In none of the cases cited by
 16 Bender did the court address whether a plaintiff is excused from serving compliant infringement
 17 contentions simply because the plaintiff does not want to reverse engineer. *FusionArc, Inc. v.*
 18 *Solidus Networks, Inc.*, No. C 06-06760 RMW (RS), 2007 U.S. Dist. LEXIS 29870 at *8 (N.D.
 19 Cal. Apr. 5, 2007) (reverse engineering was not required where "it does not appear that [the
 20 patentee] has failed to 'link' its contentions regarding Solidus's accused systems to the claims of
 21 the patent"); *Network Caching Tech., LLC v. Novell, Inc.*, No. C-01-2079 VRW, 2003 U.S. Dist.
 22 LEXIS 9881, at *14 (N.D. Cal. Mar. 21, 2003) (finding a patentee's revised contentions to be in
 23 compliance with Patent L.R. 3-1 where the contentions in question "map[ed] specific elements of
 24 defendants' allegedly infringing products onto [patentee's] claim construction");
 25 *STMicroelectronics, Inc. v. Motorola, Inc.*, 308 F. Supp. 2d 754, 756 (E.D. Tex. 2004) (finding
 26 under the specific facts of the case that additional analysis, such as reverse engineering, was
 27 unnecessary because "it appears that Motorola has met the Patent Rule 3-1 disclosure standard").
 28 Indeed, as Judge Lloyd instructed Bender last May in the parallel *Bender v. Infineon* case,

1 “reverse engineering is not always necessary if there’s sufficient available information to produce
2 workmanlike infringement contentions without it. That’s not to say that the Plaintiff never has to
3 do reverse engineering to formulate adequate infringement contentions.” (Ex. A, 5/11/10 *Bender*
4 *v. Infineon* Hearing Tr. at 4:18-24.)

5 Bender’s reliance on *Renesas Tech. Corp. v. Nanya Tech. Corp.*, No. C03-05709JFHRL,
6 2004 WL 2600466 (N.D. Cal. Nov. 10, 2004) fully supports Maxim’s motion. The court in
7 *Renesas* specifically set forth the steps that Bender could have taken to comply with the Patent
8 Local Rules – purchase and analyze the accused Maxim products. *See id. at* *3 (explaining that
9 plaintiff reverse engineered three products before grouping similar accused products).

10 Bender’s argument that requiring reverse engineering would obviate the need for
11 discovery, placing the Patent Local Rules in contravention with the Federal Rules, is simply
12 untrue. The results of reverse engineering are not necessarily “proof” of infringement, but rather
13 a representation of the circuitry within a chip. After using reverse engineering to overcome the
14 hurdle of providing notice of the location of each claim element, discovery of schematics, and
15 further analysis, would still be required to prove infringement. Bender’s reliance on *O2 Micro*
16 does not change the analysis. (Docket No. 60 at 17-18). *O2 Micro* is not concerned with reverse
17 engineering or the detail required for infringement contentions. To the contrary, the Federal
18 Circuit in *O2 Micro* **affirmed** the Northern District’s ability to impose sanctions for failing to
19 comply with the Patent Local Rules, recognizing the usefulness of such rules in governing
20 discovery. *See O2 Micro Int’l Ltd., v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366, 1369-70
21 (N.D. Cal. 2006).

22 Bender cavalierly asserts that it would be a violation of his substantive due process rights
23 if he were required to reverse engineer a product to comply with the Patent Local Rules. (*See*
24 Docket No. 60 at 18.) Bender cites no authority for this proposition. To the contrary, the
25 Supreme Court has specifically noted that, “[a]s a general matter, the Court has always been
26 reluctant to expand the concept of substantive due process because guideposts for responsible
27 decision-making in this uncharted area are scarce and open-ended.” *Collins v. City of Harker*
28 *Heights*, 503 U.S. 115, 125 (1992) (*citing Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225-

226 (1985)). There is simply no basis for Bender's "due process" challenge to the Patent Local Rules.

Finally, Bender argues, unpersuasively, that he should be relieved of his obligation to provide specific contentions because of the absence of a specific reverse engineering requirement in the Patent Local Rules, and the cost of reverse engineering. (Docket No. 60 at 16.) Patent L.R. 3-1(c) requires a patentee to "identify[] specifically where each limitation of each asserted claim is found within each Accused Instrumentality." As this Court has found, Bender's contentions have not done this. It is incumbent on the plaintiff to satisfy this requirement, even if it requires spending money on an investigation. Bender's own expert has indicated that Bender could get the information he needs through reverse engineering. (Ex. B, Pedrotti Dep. at 47:5-48:2.) Bender has offered no evidence in other cases, or in any of his parallel cases in this jurisdiction, that he is unable to reverse engineer. Bender's sole proof of costs is inadmissible hearsay evidence in another case that reverse engineering one particularly complex chip could cost over a million dollars, which has been directly challenged by the defendant in one of the cases. (*Compare* Ex. A, *Bender v. Infineon* Hearing Tr. at 12:20-24 *and* Ex. C, Kuhn Decl. at ¶ 6 *with* Ex. D, Jeruss Decl. at ¶ 1-6.) In this case, two admissible, expert declarations have submitted by Maxim, and stand un rebutted by Bender. (Docket Nos. 26 and 27, attached as Exs. E and F respectively.) These declarations show that Bender could reverse engineer a chip for approximately \$20,000. (Ex. E, Garong Decl. at ¶ 23-27; Ex. F, Garong Supplemental Decl. at ¶ 3.)

2. Bender Cannot Demonstrate That 3rd ICs Identify The Location Of The Claim Elements.

Bender makes no legitimate showing that he complied with this Court's order that he serve infringement contentions that "specify the location of each [claimed] element within the accused product." (*See* Docket No. 54 at 3:18-20, 5:13-14.) As discussed below, all of Bender's arguments are based entirely on opinions from two experts, each of whom has provided deposition testimony that directly contradicts Bender's position.

As a general matter, each of Bender's experts has testified, under oath, that the

1 infringement contentions do not identify the specific location of each element of each asserted
 2 claim. Bender's declarant Dr. Sergio Franco testified that Bender's 3rd ICs illustrate the
 3 locations of "only some, not all" of the claim elements. (Ex. G, Franco Dep. at 180:10-20.)¹ Dr.
 4 Franco further testified that the "level of detail" of Claim 35 is not present in Bender's 3rd ICs.
 5 (*Id.*) He testified repeatedly that he could not tell if any Maxim product has all of the elements of
 6 claim 35 without seeing circuit-level schematics of the product. (*Id.* at 147:22-148:1;
 7 157:12-158:4; 166:25-167:8.) He also admitted that he cannot identify the locations of the
 8 elements of either of the asserted claims from the data sheets Bender used to create Bender's
 9 3rd ICs. (*Id.* Franco Dep. at 104:20-106:20; 159:3-10.) Bender's other declarant, Dr. Kenneth
 10 Pedtrotti, also admitted in his declaration that "the incomplete nature of the simplified block
 11 diagrams" hampered his ability to identify the locations of the claimed elements. (*See* Docket
 12 No. 62 at 4:8-9.) In other words, both of Bender's experts have recognized that Maxim's
 13 published datasheets do not contain the same level of detail as Bender's claims. Yet it is clear
 14 that the Maxim datasheets are the only source of information Bender has analyzed, or is willing to
 15 analyze, for his contentions.

16 Instead of identifying the location of each claim element as ordered, Bender's 3rd ICs are
 17 based solely on assumptions, circled portions of high-level datasheets, and statements about
 18 "what any electrical engineer would understand." Bender does not deny that the Court's order
 19 directly prohibited Bender's reliance on these bases. (*Compare* Docket No. 57 at 4:2-7 with
 20 Docket No. 60.) Furthermore, Bender fails to refute that has violated each of these three
 21 prohibitions.

22 Bender's opposition makes clear that he continues to rely on assumptions regarding the
 23 presence of required elements.² For example, Bender completely ignores Maxim's challenge to

24 ¹ The deposition of Dr. Franco demonstrated that his support for Bender's legal theory's
 25 are suspect. He testified that in 2007, he refused to consult regarding Bender's patent and wrote
 26 that "I'm finding it very difficult to understand the fine points of the patent, and to come up with
 27 a reliable assessment of what the aims are. I am just totally unfamiliar with the patent terrain, and
 28 prefer not to commit myself to something that is above my judgmental abilities." (Ex. G, Franco
 Dep.. at 195:8-13.) He further testified that the only difference to his understanding of patents
 since he wrote that e-mail is the "tutelage from David and Steven Kuhn," Bender's attorney and
 the son of Bender's attorney. (*Id.* at 197:4-5.)

² Bender's argument that "[t]he presence [of current rails and voltage supply rails] is

his attempts to identify the “location” of an element that has been “obfuscated” behind a dotted line in a datasheet diagram. (*Compare* Docket No. 57 at 4:24-5:4 *with* Docket No. 60.) For example, one of these “obfuscated” claim elements is the “second input stage” element of claim 8. (See Docket No. 57 at 5:2-4.) This element is the primary difference between asserted claim 8 and the cancelled claim 1 of the ’188 patent. (*Compare* Docket No. 4-1 at 15:49-16:9 *with* Docket No. 4-1 at 16:34-64.) Claim 1 was canceled by the United States Patent and Trademark Office (“USPTO”) over the prior art on reexamination. (See Ex. H, Excerpt of USPTO Office Communication at 4.) In other words, an accused product that lacks this “second input stage” element not only does not infringe claim 8, it may well be using the very prior art techniques that invalidated claim 1 of the ’188 patent. Similarly, Bender fails to explain how any of his other assumptions of the presence of other elements behind a dotted line comply with this Court’s order, including the “first and second pair of opposing current mirrors” element of claim 35 and the “pair of opposing current mirrors” element of claim 8. (*Compare* Docket No. 57 at 4:24-5:4 *with* Docket No. 60.)

Bender’s opposition completely ignores the fictitious Maxim circuits he concocted entirely out of assumptions. (*Compare* Docket No. 57 at 5:12-6:13 *with* Docket No. 60.) Bender’s expert Dr. Franco testified extensively that this circuit is a made-up circuit based on assumptions. Specifically, Dr. Franco testified that “[t]his circuit was generated making a supposition.” (Ex. G, Franco Decl. at 181:3-4.) He described that he had worked with Bender’s attorney David Kuhn, and Mr. Kuhn’s son, Stephen Kuhn, to create this circuit and that “we *surmised* that the circuit *might* be like this.” (*Id.* at 181:12-20 (emphasis added).) Dr. Franco further confirmed that he cannot identify any actual Maxim product that contains the circuitry of his fabricated drawing. (*Id.* at 177:10-16.) Indeed, Dr. Franco testified that Bender’s first imaginary circuit would not even operate as required by Claim 35. (*Id.* 172:19-21.)

(continued...)

based not upon an assumption but upon the laws of physics,” is misguided. (See Docket No. 60 at 7:1-3.) The Court did not order Bender to justify his belief that certain elements were present, it ordered him to “actually specify the location of each element within the accused product.” (Docket No. 54 at 3:19-20.)

1 The expert declarations discussing the “necessity” of certain elements were completely
2 undermined by the deposition testimony of these experts. Dr. Franco’s declaration stated that
3 performance characteristics and general descriptions in the MAX4180 product datasheet make it
4 “*all but an absolute certainty* that the elements of Claim 8 are present in MAX4180.” (Docket
5 No. 61 at 6:12-14; 7:20-24.) However, Dr. Franco later testified that he “cannot say” from the
6 MAX4180 datasheet whether at least one element of claim 8 is in fact present. (Ex. G, Franco
7 Dep. at 123:25-124:18.) Dr. Pedrotti stated in his declaration that “I believe that there is a very
8 strong likelihood that each and every element of Claim 8 is present in such so-called Maxim
9 current feedback amplifiers.” However, Dr. Pedrotti gives no bases for this statement, nor
10 concludes that the elements are actually present. (Docket No. 62 at 3:14-18.) He later argues that
11 “there are, to my knowledge, no ways to make a high-gain current feedback amplifier such as the
12 product MAX4180 without Buffered Transconductance Amplifier architectures.” (*Id.* at 6:1-5.)
13 However a conclusion that a product uses a “Buffed Transconductance Amplifier” architecture
14 says nothing about whether the elements of Claim 8 are present. Bender’s entire ’188 patent is
15 titled to “Buffered Transconductance Amplifiers” (Docket No. 4-1.) Since the USPTO rejected
16 multiple other “Buffered Transconductance Amplifier” claims of this patent on reexamination,
17 such an amplifier could just as easily be prior art. (*See* Ex. H, Excerpt of USPTO Office
18 Communication at 4.)

19 Bender failed to adequately address his violation of the Court’s order by circling portions
20 of a high-level datasheet. Bender’s only response is to argue that, in his 3rd ICs, he circled
21 different portions of the datasheet. (*See* Docket No. 60 at 7:10-15.) But the Court did not order
22 Bender to circle different parts of the datasheets, it ordered him not to rely upon circling parts of
23 datasheets at all. (*See* Docket No. 54 at 3:25-4:1.)

24 Finally, Bender fails to justify his continued reliance on Maxim’s engineers doing his
25 work for him, in direct violation of the Court’s order. Bender’s expert declarations continue to
26 opine regarding what “any” electrical engineer would be able to do. Specifically, Bender’s expert
27 Dr. Pedrotti declared that “I believe that any analog electrical engineer would, could, and should
28 be able to locate the amplifiers and understand the elements inside of the amplifiers based on the

1 information set forth in datasheets provided and to interpret the applicable underlying
 2 schematics.” (Docket No. 62 at 3:4-8.) Similarly, Bender’s expert Dr. Franco declared that “any
 3 competent analog electrical engineer knowledgeable in the analog electronics art would, could,
 4 and should be able to recognize and locate the analog amplifiers . . . referenced in the publicly-
 5 available so-called block diagrams,” and that “looking at the schematic files therefore discern,
 6 interpret, comprehend, and understand the elements shown inside the amplifiers.” (Docket
 7 No. 61 at 8:18-9:1.) Not only do such statements contravene this Court’s order, they are also
 8 irrelevant. Dr. Franco testified that he cannot locate the claimed elements based on the claim
 9 charts provided by Bender. (Ex. G, Franco Dep. at 104:20-106:20; 159:3-10.) That is the
 10 standard set out in the Patent Local Rules and the Court’s order. It is not relevant what “any”
 11 electrical engineer could or could not do with Maxim’s highly proprietary information in his or
 12 her hands. There is simply no excuse for such a flagrant violation of a Court order.

13 **3. Bender Fails to Explain His Violation of the Court’s Order That He**
 14 **Justify His Placement of Each Accused Product Into A Representative**
 15 **Category.**

16 Bender does not even argue that he “provided an adequate explanation of why the claim
 17 charts are representative of all of the accused products,” as the Court ordered. (Docket No. 54 at
 18 4:17-18.) Instead, Bender argues that because amplifier designs are reused for different products
 19 “that require [similar] performance characteristics,” he is justified in accusing any Maxim
 20 products he wishes. (*See* Docket No. 60 at 8:9-14.) However, Bender’s own expert Dr. Franco
 21 has testified that he does not have “any knowledge about which, if any, Maxim products would
 22 reuse the amplifier design from any other Maxim product.” (Ex. G, Franco Dep. at 49:11-21; *see*
 23 *also id.* at 60:4-13.) Bender has reduced the number of accused products associated with at least
 24 one claim chart from fifty to just nine, MAX4180-4187 and MAX9867. (*Compare* Docket
 25 No. 58-1 at A10, A14, A18, A22, A27, A32, A36, A40, A44 *with* Docket No. 58-3 at C5, C10.)
 26 However, Bender offers no justification for his assertion that his charts are “representative” for
 27 the products he associates with them. To the contrary, Bender admits that, for claim 35, the eight
 28 products he lists as example products, are not, by themselves, infringing. (*See* Docket No. 58-3

1 at C10.) Instead, Bender argues that these products would be infringing if placed in a fanciful
 2 arrangement that he created, without identifying a single customer that has arranged them in that
 3 way. Furthermore, Bender has done nothing to shorten his long list of accused products—the vast
 4 majority of which he made absolutely no effort to even associate with a claim chart.

5 **4. Bender Has Failed To Set Forth The Required Elements Of Indirect**
 6 **Infringement.**

7 Bender's opposition does not correct or justify his failure to identify the elements of
 8 indirect infringement. Instead, Bender focuses his opposition on arguing why he believes that
 9 Maxim may induce infringement. But the Court did not order him to discuss his thought process.
 10 Rather, the court ordered Bender to:

- 11 • “specify any third party,” alleged to directly infringe,
- 12 • “describe any acts committed by [that] third party that would suggest direct
- 13 infringement,” and
- 14 • set forth “a description of the acts of the alleged indirect infringer that contribute
- 15 to or are inducing that direct infringement.”

16 (Docket No. 54 at 4:24-5:4.) Bender has not provided this information, cited any authority that
 17 this information should not be required, or even requested another chance to provide this
 18 information.

19 **B. The Proper Remedy For Bender's Conduct Is Dismissal.**

20 Bender's opposition wholly fails to address the law Maxim cited supporting terminating
 21 sanctions for violation of a court order, the unavailability of lesser sanctions, and the prejudice to
 22 Maxim if the case continues. Bender does not deny that terminating sanctions can be imposed for
 23 failure to comply with a court order. Nor does he deny that the Federal Circuit granted such
 24 terminating sanctions under Ninth Circuit law in the highly analogous case of *Refac Int'l, Ltd. v.*
 25 *Hitachi, Ltd.*, 921 F.2d 1247 (Fed. Cir. 1990).

26 Bender's only attempt to avoid the sanction of dismissal is the unpersuasive argument
 27 that, if the Court were to ignore Bender's violation of the its order, “[i]t is difficult to see how . . .
 28

[producing documents] is unduly prejudicial to Maxim.” (Docket No. 60 at 20:5-8.) Yet Bender’s own expert, Dr. Sergio Franco addressed the proprietary nature of schematics at his July 12, 2010 deposition:

Q. Sure. Now outside of a legal setting, if a document were -- if a document were released, what would be the effect on the company?

A. A document such as. . . ? Can you give me an example?

Q. Let’s say a fully detailed schematic for the MAX4180, for instance.

A. Well, the company would be subject to competition. The first fear of the company would be that somebody else looks at that schematic and just duplicates it, second sourcing or whatever; although second sourcing, if I understand it correctly, is based on an agreement between two companies. Right?

Q. Uh-huh.

A. So this will be a form of a legal second sourcing or maybe just -- maybe change the design, make some schematic changes and essentially exploit the investment -- the effort and investment made by Company

A. ***So there are good reasons for Company A not to be wanting to disclose unless they are forced to.***

Q. Okay. So you would agree that schematics, in general, are highly proprietary documents?

A. Over the years they become more and more so.

(Ex. G, Franco Dep. at 68:15-69:12 (emphasis added).) To force Maxim to produce such proprietary documents unnecessarily so that Bender can go on a fishing expedition would be highly prejudicial to Maxim.³ Maxim would be further prejudiced by having to bear the expense of complying with Bender’s obligations for him simply because Bender refuses to incur the expense himself. Bender does not address the availability of lesser sanctions. However, his response on prejudice tacitly admits that there are none. Bender has proposed only that his non-compliance be ignored, and that the burden of Bender’s infringement analysis in this case be shifted to Maxim. (See Docket No. 60 at 20:5-8.) Under the standards articulated in *Refac Int’l, Ltd. v. Hiachi, Ltd.*, 921 F.2d 1247 (Fed. Cir. 1990), this Court should grant Maxim’s motion for the sanction of dismissal.

Bender’s sole legal authority opposing dismissal as a remedy for violation of a court order is *Network Caching Tech., LLC v. Novell, Inc.*, No. C-01-2079 VRW, 2003 U.S. Dist. LEXIS

³ Maxim’s reticence to produce schematics unnecessarily is particularly warranted in this case. Even though production would occur under a protective order, this current motion was brought because Bender’s counsel has already failed to comply with one order by this Court. Further, Bender’s counsel previously made reference in a public briefing to the contents of schematics that were produced under a protective order in a different case. (See Docket No. 52 at 3 n.3.)

1 9881 (N.D. Cal. Mar. 21, 2003). (See Docket No. 60 at 19:15-20:2.) However, *Network Caching*
 2 based its denial of a motion for terminating sanctions on its finding that the ordered infringement
 3 contentions *complied* with the court's order and the local rules. *Network Caching*, 2003 U.S.
 4 Dist. LEXIS 9881 at 12-13. *Network Caching* does not address whether dismissal would have
 5 been warranted if the patentee had failed to comply with the court's order, as Bender has done
 6 here. Because Bender was told on over ten occasions by seven different judges how to comply
 7 with the Patent Local Rules prior to his service of his 3rd ICs on April 28, 2010, there is no
 8 excuse for his failure to comply with this Court's order.⁴ Bender asserts that dismissal is not
 9 appropriate because "until [the March 22, 2010] Order, Plaintiff did not know that the then
 10 subject claim charts were not in compliance with the appropriate requirements." (Docket No. 60
 11 at 19:10-12.) However, prior to the March 22, 2010 order, Bender had already received at least
 12 six of the separate orders informing him that his similar infringement contentions in his parallel
 13 cases in this district were inadequate. Furthermore, Bender does deny that the Court's March 22,
 14 2010 order gave specific guidance regarding what would and would not be acceptable in Bender's
 15 3rd ICs. Whether or not Bender was aware of this guidance before receiving the order is
 16 irrelevant to his failure to comply with the order after he received it.⁵

17 ⁴ *Bender v. Freescale Semiconductor, Inc.*, No. C 09-1156 PHJ (MEJ), 2010 WL 1689465
 18 (N.D. Cal. Apr. 26, 2010); *Bender v. Advanced Micro Devices, Inc.*, No. C-09-1149 MMC
 19 (EMC) (N.D. Cal. Apr. 22, 2010); *Bender v. Broadcom Corp.*, No. C 09-01147 MHP, 2010 U.S.
 20 Dist. LEXIS 28336 (N.D. Cal. Mar. 23, 2010); *Bender v. Maxim*, No. C 09-01152 SI, 2010 U.S.
 21 Dist. LEXIS 32115 (N.D. Cal. Mar. 22, 2010); *Bender v. Infineon Technologies North America*
 22 *Corp.*, No. C09-02112 JW (HRL), 2010 U.S. Dist. LEXIS 24193 (N.D. Cal. Mar. 16, 2010)
 23 (designated "not for citation"); *Bender v. Infineon Technologies North America Corp.*, No. C09-
 24 02112 JW (HRL), 2010 U.S. Dist. LEXIS 24096 (N.D. Cal. Mar. 16, 2010) (designated "not for
 citation"); *Bender v. Micrel Inc.*, No. C 09-01144 SI, 2010 U.S. Dist. LEXIS 18134 (N.D. Cal.
 Feb. 6, 2010); *Bender v. Advanced Micro Devices, Inc.*, No. C-09-1149 MMC, 2010 U.S. Dist.
 LEXIS 11539 (N.D. Cal. Feb. 1, 2010); *Bender v. International Business Machines Corp.*, Case
 No. C 09-01249 RMW (RS), 2009 U.S. Dist. LEXIS 126510 (N.D. Cal. Nov. 13, 2010); *Bender*
v. Intersil Corp., No. C 09-01155 CW, 2009 U.S. Dist. LEXIS 126515 (N.D. Cal. Oct. 29, 2009)

25 ⁵ Lack of knowledge about how to comply with infringement contentions is the same
 26 defense Bender has made since his contentions were first found insufficient. Specifically on
 27 October 29, 2009, Bender told Judge Zimmerman through counsel in the *Bender v. Intersil* case:
 28 "You are absolutely right. We believed then that our infringement contentions and our claim
 char[ts] were adequate. This is the first that we've been told by authority that it's – that they're
 not. We're happy to supplement . . ." (Ex. I, 10/29/09 *Bender v. Intersil*, Hearing Tr. at
 30:8-12. Now, after eight months and ten orders that his contentions in this and parallel cases are
 deficient, Bender's continued protestations that he didn't know his contentions were insufficient
 ring hollow.

1 **III. CONCLUSION**

2 For the foregoing reasons, Maxim respectfully requests that the Court grant Maxim's
3 motion to for sanction of dismissal.

4
5
6 Dated: July 16, 2010

Respectfully submitted,

7 Jones Day

8
9 By: /s/ Greg L. Lippetz

10 _____
Greg L. Lippetz

11 Counsel for Defendant
12 MAXIM INTEGRATED PRODUCTS, INC.